

Hon. Richard Jones

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

EVAN JOHNSON, JOSH GRAY, and
DYLAN COOK,

Plaintiffs,

V.

HYTECH POWER, LLC., a Washington limited liability company; TOM GIBBONS, THE ESTATE OF S.B. JOSEPH CLARK; CHASE C. ENGELHART and MARGARET A. CLARK, Co-Personal Representatives of the ESTATE OF S.B. JOSEPH CLARK, Deceased; CHASE C. ENGELHART, individually; THOMAS GIBBONS, individually and his marital community with JANE DOE GIBBONS, his spouse; AVIATION PARTNERS, INC., a Washington corporation; and REGENCE BLUESHIELD, a Washington miscellaneous and mutual corporation.

Defendants.

NO. 2:20-cv-01676-RAJ

MOTION TO AMEND COMPLAINT

(CLERK'S ACTION REQUIRED)

Noting Date: April 23, 2021

I. RELIEF REQUESTED

Plaintiffs Evan Johnson, Josh Gray, and Dylan Cook (collectively “Plaintiffs”) request entry of an order granting leave to file an Amended Complaint (“Amended Complaint”) pursuant to Fed. R. Civ. P. 15(a) and LCR 15 in order to amend the parties identified as the administrator or sponsor of the medical benefits insurance plan related to the claims made by the Plaintiffs.

A redline of Plaintiffs' proposed Amended Complaint is attached to the Declaration of Sean V. Small at *Exhibit A* and a clean version is attached at *Exhibit B*.

II. STATEMENT OF FACTS

A. Claims in Complaint

This is an action for unpaid wages that are currently due and owing to Evan Johnson, wrongful denial of coverage under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”), COBRA notice violations, and a claim of attorney’s fees under ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1).

All of the Plaintiffs were employees of HyTech Power, LLC (“HyTech”) and enrolled in a medical benefits plan (“Plan”) through HyTech as the employer. Small Decl. ¶ 4. The Plan was contracted through Regence BlueShield, who is currently a defendant in this matter and identified by previous counsel for Plaintiffs as the Plan Administrator within the meaning of 29 U.S.C. § 1002(16).

However, after reviewing Regence BlueShield and conducting further investigation, it appears that Regence BlueShield was not the Plan Administrator or Sponsor, and as such, Plaintiffs seek leave to identify the correct parties. *Id.* ¶ 5.

1 **B. Amended Complaint**

2 Regence BlueShield represented in its Motion to Dismiss that the Plan identified that the
 3 Regence BlueShield medical coverage contract was entered into with Aviation Partners Boeing
 4 Winglets II, LLC, (“APB Winglets II”). However, after a reasonable search, the Plaintiffs were
 5 unable to find any formation or registration for an entity called Aviation Partners Boeing Winglets
 6 II, LLC. *Id.* ¶ 6.

7 Counsel for Plaintiffs requested that HyTech, as the employer, identify who the Plan Sponsor
 8 and Administrator was; however, at this time, neither the Plaintiffs nor the Defendants are able to
 9 clearly identify the Plan “administrator” or “sponsor” within the meaning of 29 U.S.C. § 1002(16).
 10 *Id.* ¶ 7.

11 While additional discovery is required, Plaintiffs assert in good faith that Aviation Partners,
 12 Inc., a Washington corporation, (“API”), APB Winglets Company, LLC, a foreign limited liability
 13 company, doing business as Aviation Partners Boeing (“APB”), HyTech (as the Plaintiffs’ employer),
 14 or APB Winglets II (as some outside board or committee entered into by multiple employers) may
 15 be the Plan “administrator” or “sponsor” within the meaning of 29 U.S.C. § 1002(16). *Id.* ¶ 8.

16 The Plaintiffs’ claims are partially based on the fact that the Plan Administrator or Sponsor
 17 failed to give notice and that Plaintiffs were denied medical coverage as permitted by COBRA due
 18 to the failure to receive timely notice. The Plaintiffs therefore seek to amend the Complaint to add
 19 APB and APB Winglets II as Defendants in this matter.

III. ISSUE PRESENTED

Whether the Court grant Plaintiffs leave to amend the Complaint to identify the potentially liable parties, when doing so is consistent with Fed. R. Civ. P. 15(a) and LCR 15?

ANSWER: YES

IV. EVIDENCE RELIED UPON

Plaintiffs rely upon the files and records herein, including *Exhibits A-B*, the Amended Complaint, submitted with this motion in accordance with LCR 15.

V. LEGAL AUTHORITY

A. Leave to Amend Shall be Freely Given When Justice So Requires.

Pursuant to Fed. R. Civ. P. 15(a), “[a] party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served.” Otherwise, the party “may amend the party’s pleading only by leave of court or by written consent of the adverse party.” *Id.* Leave to amend “shall be freely given when justice so requires,” and “this policy is to be applied with extreme liberality.” *Id.*; *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). After a responsive pleading has been filed, “leave to amend should be granted unless amendment would cause prejudice to the opposing party, is sought in bad faith, is futile, or creates undue delay.” *Martinez v. Newport Beach City*, 125 F.3d 777, 786 (9th Cir. 1997).

Unless undue prejudice to the opposing party will result, a trial judge should ordinarily permit a party to amend its complaint.” *Duhn Oil Tool, Inc. v. Cooper Cameron Corp.*, 609 F.Supp.2d 1090, 1092 (E.D.Cal. 2009) (quoting *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir. 1973)). Prejudice is the touchstone of the inquiry whether a motion to amend should be granted under Rule

15(a). *Id.* at 1092–93 (quoting *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.2003)). Absent prejudice or a strong showing of any of the remaining Rule 15(a) factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend. *Id.* Prejudice exists where amendment will significantly hinder a defendant's ability to defend against the plaintiff's claims, as in cases where the defendant has no notice, discovery has already been completed, or when the amendment will require re-litigation of significant issues. *See Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1161 (9th Cir.1989).

Justice requires that the Plaintiffs be permitted to amend the Complaint as the Plaintiffs have just recently identified new parties who are relevant and to the matters being litigated and potentially liable for the harm. There would be no prejudice or unfair surprise to Defendants in allowing the proposed amendment to the Plaintiffs' Complaint. The trial date and discovery cut off have not yet been set and there currently is a pending motion to dismiss by Regence BlueShield that requests it be dismissed from this matter. The proposed changes in the Amended Complaint are not expanding the claims pled by the Plaintiffs and the Defendants can suffer no prejudice.

The Defendants are all on notice that there is an issue identifying the Plan Administrator or Sponsor, and they will have an opportunity to respond to the Amended Complaint and prepare to defend the same. Further, this Court has stricken the previous discovery conference deadlines until Regence BlueShield's Motion to Dismiss is heard and any new parties added to this matter will have sufficient time to respond and defend against the claims asserted.

VI. PROPOSED ORDER

A proposed Order Granting Leave to Amend Complaint is submitted with this motion.

DATED this 8th day of April, 2021.

LASHER HOLZAPFEL SPERRY & EBBERSON
PLLC

/s/ Sean V. Small

/s/ *Paul J. Spadafora*

By _____
Sean V. Small, WSBA #37018
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Attorneys for Plaintiffs

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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that on April 8, 2021, I caused the foregoing pleading to be electronically
4 filed with the Clerk of the Court using the CM/ECF system, which will send notification of such
5 filing to the following counsel:

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25 DATED this 8th day of April, 2021 at Seattle Washington

26 /s/ *Ellen Krachunis*

27 _____
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29 Legal Assistant